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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

16 COLTON SCHMIDT, individually and on
behalf of others similarly situated; REGGIE
17 NORTHRUP, individually and on behalf of
others similarly situated,

18 Plaintiffs,

19 v.

20 AAF PLAYERS, LLC, a Delaware Limited
21 Liability Company, d/b/a/ The Alliance of
American Football; THOMAS DUNDON, an
22 individual; CHARLES "CHARLIE"
EBERSOL, an individual; LEGENDARY
23 FIELD EXHIBITIONS, LLC, a Delaware
Limited Liability Company; AAF
24 PROPERTIES, LLC, a Delaware Limited
Liability Company; EBERSOL SPORTS
25 MEDIA GROUP, INC., a Delaware
Corporation; and DOES 1 through 200,
26 inclusive,

27 Defendants.
28

Case No. 3:19-cv-03666-JCS

Hon. Joseph C. Spero

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: August 16, 2019
Time: 9:30 a.m.
Courtroom: G, 15th Floor

Action Filed: April 10, 2019
Trial Date: None Set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 16, 2019 at 9:30 a.m., in Courtroom G, 15th Floor, of the above-captioned court, located 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Thomas Dundon will move to dismiss Plaintiffs' Complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.

This Motion will be made on the grounds that this forum cannot exercise jurisdiction over Defendant Thomas Dundon, who is a Texas resident and does not have the requisite minimum contacts with the State of California.

This motion will be based upon this Notice of Motion and Motion to Dismiss, the Memorandum of Points and Authorities, the Declaration of Thomas Dundon, and on such other further evidence and argument as may be presented at the time of hearing on the motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Thomas Dundon ("Dundon"), an individual, does not have sufficient contacts with the State of California to support either the exercise of general jurisdiction or specific jurisdiction over him in this case.

Plaintiffs assert the State of California and—by virtue of the removal, this Court—can exercise personal jurisdiction over Dundon with the following statements:

At all times, all Defendants and each of them [including Dundon] purposely availed themselves of the benefits of the State of California by residing or doing business in California, thereby submitting to the jurisdiction of the courts of the State.

...

At all times, all Defendants and each of them [including Dundon] maintained sufficient contacts with the State of California, by either residing in California or operating the football league's business and management functions in California, such that this Court's exercise

of personal jurisdiction over the Defendants does not offend traditional notions of fair play and substantial justice.” (Complaint, ¶¶8-9.) However, Plaintiffs fail to explain what “sufficient contacts” Dundon had “with the State of California,” nor do they provide any facts to support how Dundon, who is a Texas resident, “resided or operat[ed] the football league’s business and management functions in California” in his individual capacity to justify this Court’s jurisdiction.

As demonstrated by his accompanying declaration, Dundon is a Texas resident. He does not maintain any residence in California. Dundon does not own any property in California—real or personal. Dundon does not—nor has he ever—maintained a telephone number in California. He does not directly own or operate a business headquartered in California. Plaintiffs served Dundon with the summons in the original California state court action in Texas, not California.

Dundon’s contacts with California—or lack thereof—fall below the minimum necessary for a California court to exercise general or specific jurisdiction over him in his individual capacity. Accordingly, this Court lacks personal jurisdiction over Dundon, and this case should be dismissed against him under Rule 12(b)(2) of the Federal Rules of Civil Procedure.

II. FACTS

Dundon is, and at all relevant times, was a resident of the County of Dallas in the State of Texas. (Declaration of Thomas Dundon (“Dundon Decl.”), ¶2.) Dundon does not maintain a residence in, nor has he ever resided, owned, leased, rented, or controlled any real estate or personal property in California. (*Id.*, ¶¶ 3-4.) Dundon does not maintain and has never maintained a telephone number in California. (*Id.*, ¶ 6.) Dundon does directly own or operate businesses headquartered in California. (*Id.*, ¶ 7.) Dundon does not maintain an office in California, nor does he employ and California employees. (*Id.*, ¶ 8.)

The allegations against Dundon in this lawsuit relate to alleged statements and conduct by Dundon in 2019, only. (Compl., ¶¶ 30-46.) Dundon’s only trip to California in 2019 was to play golf in Pebble Beach. (Dundon Dec., ¶ 9.) Dundon’s only connection to California during the

relevant period of the entire lawsuit—May, 2017 to April, 2019¹—is one business trip to Los Angeles for a deal totally unrelated to the Alliance of American Football that was never finalized and annual personal trips to Pebble Beach to play in a golf tournament. (*Id.*, ¶ 9.) Dundon never traveled to California in connection with the investment Dundon Capital Partners LLC made in the Ebersol Sports Media Group, Inc. (the entity through which he funded the Alliance of American Football). (*Id.*, ¶ 11.) He never traveled to California in his capacity as a board member of Ebersol Sports Media Group, Inc. (*Id.*, ¶ 14.)

III. LEGAL AUTHORITIES AND ARGUMENT

A. Dundon Must Have Sufficient “Minimum Contacts” With the State of California to Support This Court’s Exercise of Personal Jurisdiction Over Him.

Federal courts do not have nationwide personal jurisdiction. They have no broader power over persons outside the state in which they sit than do the local state courts. *Omni Capital Int’l, Ltd. v. Rudolph Wolff & Co., Ltd.*, 484 U.S. 97, 104-105, 108 S.Ct. 404, 98 L.Ed.2d 415 (1987). California law allows its courts to exercise personal jurisdiction “on any basis consistent with the Constitutions of California and the United States.” *Pavlovich v. Superior Court*, 29 Cal.4th 262, 268, 127 Cal.Rptr.2d 329 (2002), citing Cal. Code Civ. Proc. § 410.10. “In order to satisfy due process requirements, the defendant must have ‘minimum contacts’ with the forum state such that the maintenance of the suit does not offend the ‘traditional notions of fair play and substantial justice.’” *F. Hoffman-La Roche, Ltd. v. Superior Court*, 130 Cal.App.4th 782, 795, 30 Cal.Rptr.3d 407 (2005), quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

When a defendant challenges personal jurisdiction, the plaintiff has the burden to prove, by a preponderance of the evidence, the factual basis to exercise jurisdiction. *Dole Foods Co., Inc. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002); *Vons, supra*, 14 Cal. 4th at 449; *DVI, Inc. v. Superior Court*, 104 Cal. App. 4th 1080, 1090, 128 Cal.Rptr.2d 683 (2002). The plaintiff must “present facts

¹ While this date range covers the period of all of Plaintiffs’ allegations in the Complaint, the only allegations asserted against Dundon occurred between February and April 2019.

demonstrating that the conduct of defendants related to the pleaded causes is such as to constitute constitutionally cognizable ‘minimum contacts.’” *DVI, Inc., supra*, 104 Cal. App. 4th at 1090-1091 (internal citation omitted). “An unverified complaint has no evidentiary value in meeting the plaintiff’s burden of proving minimum contacts.” *Id.* at 1091; *Thomson v. Anderson*, 113 Cal. App. 4th 258, 266, 6 Cal.Rptr.3d 262 (2003).

B. Dundon’s Contacts With California Are Insufficient to Support General or Specific Personal Jurisdiction.

Personal jurisdiction may be either general or specific. *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434, 445, 58 Cal.Rptr.2d 899 (1996). “The nature and the quality of the defendant’s contacts determine whether jurisdiction, if exercised, is general or specific.” *Hoffman-La Roche, supra*, 130 Cal.App.4th at 796. Plaintiffs presented no facts—and indeed, none exist—to warrant a California court exercising general or specific personal jurisdiction over Dundon in his individual capacity.

1. There Is No General Jurisdiction Over Dundon Because Dundon Is Neither Domiciled in California, Nor Does He Have Substantial, Continuous and Systematic Contacts In The State.

“General jurisdiction exists when a defendant is domiciled in the forum state or his activities there are substantial, continuous, and systematic.” *Hoffman-La Roche, supra*, 130 Cal.App.4th at 796. Where the contacts are sufficiently substantial, continuous, and systematic, it is unnecessary to connect the cause of action with the defendant’s business relationship to the forum. *Vons, supra*, 14 Cal.4th at 445. However, “contacts that are random, fortuitous, or attenuated do not rise to the minimum level, and general jurisdiction cannot be exercised under these circumstances.” *Hoffman-La Roche, supra*, 130 Cal.App.4th at 795.

It is undisputed that Dundon resides in Texas and has no domicile in California. (Dundon Decl., ¶¶ 2-3.) Indeed, he has never resided in California. (*Id.*) Nor does Dundon have such continuous and systematic contacts with the state as to create general jurisdiction over him in California. Continuous and systematic contacts are those that essentially render the defendant “at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919,

1 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011). Dundon has no such contacts in California. To wit:
2 Dundon does not own or lease any property in California (Dundon Decl., ¶ 4.); he does not have a
3 California telephone number (*Id.*, ¶ 6.); he does not directly own or operate any businesses
4 headquartered in California (*Id.* at ¶ 7); he has only traveled to California a handful of times in the
5 last few years. (*Id.*, ¶ 9.).

6 The facts presented belie any notion that Dundon is “at home” in California as he is in Texas.
7 These facts in conjunction with the Supreme Court’s declaration that the doctrine of general
8 jurisdiction is waning and “obsolescing”² demonstrate that there can be no general jurisdiction
9 exercised over Dundon in his individual capacity.

10 **2. Dundon’s Limited Travel to California Is Insufficient to Create Specific**
11 **Jurisdiction.**

12 With general jurisdiction absent, this Court may only exercise personal jurisdiction over
13 Dundon in his individual capacity if Plaintiffs can show Dundon had minimum contacts with
14 California sufficient to create specific jurisdiction over him for this particular dispute. As addressed
15 in detail *supra* and below, he did not.

16 In *Pavlovich v. Superior Court*, 29 Cal. 4th 262, 127 Cal.Rptr.2d 329 (2002), the California
17 Supreme Court explained specific jurisdiction over a nonresident defendant is available only if “(1)
18 the defendant has purposefully availed himself or herself of forum benefits . . . ; (2) the controversy
19 is related to or ‘arises out of’ [the] defendant’s contacts with the forum . . . ; and (3) the assertion of
20 personal jurisdiction would comport with ‘fair play and substantial justice’ . . .” *Id.* at 269. The
21 Ninth Circuit uses the same three-prong test, with slight linguistic differences. *Roth v. Garcia*
22 *Marquez*, 942 F.2d 617, 623 (9th Cir. 1991) (describing the third prong as “ask[ing] whether the
23 exercise of jurisdiction would be ‘reasonable.’”).

24 The plaintiff bears the burden of satisfying the first two prongs. *Sher v. Johnson*, 911 F.2d
25 1357, 1361 (9th Cir. 1990); *Davis Moreno Const., Inc. v. Frontier Steel Bldgs. Corp.*, No. CV-F-

27 ² See *Daimler AG v. Bauman*, 571 U.S. 117, 133, n.8, 152 (2014) (“general jurisdiction has
28 come to occupy a less dominant place in the contemporary scheme”).

08-854, 2009 WL 1476990 at *9 (E.D. Cal. May 26, 2009). If the plaintiff fails to satisfy either of these prongs, there is no personal jurisdiction in the forum state. If the plaintiff succeeds in satisfying both of these prongs, the burden shifts to the defendant to show that exercising jurisdiction would not “comport with fair play” or would not be “reasonable.” *Pavlovich, supra*, 29 Cal. 4th at 269; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-478 (1985).

(a) **Dundon Has Not “Purposefully Availed” Himself of California’s “Benefits” Because He Has No Sufficient Contacts with California.**

Here, Dundon never engaged in any contact with California in connection with the subject matter of the lawsuit, much less in a manner sufficient to create specific jurisdiction over him. Dundon never has resided, owned, or controlled property in California. (Dundon Decl., ¶¶ 2-4.) Dundon’s only contact with California during the relevant period of allegations against him is a single trip to Pebble Beach to play golf. (*Id.*, ¶ 9.) Dundon’s contacts and communications concerning the Alliance of American Football occurred outside of California. (Dundon Decl., ¶¶ 11, 14.) Dundon never expected to be called to court in California in connection with his involvement in the Alliance of American Football or Ebersol Sports Media Group, LLC. (*Id.*, 17.)

These *de minimis* contacts do not constitute “purposeful availment.” The California Supreme Court in *Vons, supra*, defined the necessary contacts for specific jurisdiction as those contacts whereby a nonresident “has ‘purposefully directed’ his or her activities at forum residents, or who has ‘purposefully derived benefit’ from forum activities or ‘purposefully avail[ed] himself or herself’ of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Vons, supra*, 14 Cal.4th at 446, quoting *Burger King, supra*, 471 U.S. at 471-75. The *Vons* court further pointed out that *Burger King* defines requisite contacts as those where a nonresident “deliberately” has engaged in significant activities with a State . . . or has created “continuing obligations” between himself and residents of the forum . . . manifestly [availing] himself of the privilege of conducting business [in the forum].” *Id.*

Here, Dundon, the individual—and not as officer for the AAF—has not purposefully directed any activities at Plaintiffs or California residents, he has not conducted meaningful

activities within California, and he has not invoked the benefits and protections of California laws. (Dundon Decl., ¶¶ 2-17.) Therefore, this Court should not exercise specific jurisdiction over Dundon and Plaintiffs' claims against him should be dismissed.

(b) Even If Dundon's Isolated Contacts With California Constitute "Purposeful Availment," This Lawsuit Does Not Arise From Them But Rather From Later Alleged Conduct.

Plaintiffs cannot establish the second prong of the *Roth/Pavlovich* analysis: namely, that their claims in the Complaint arise from Dundon's isolated contacts with California. The Ninth Circuit applies the "but for" test when analyzing whether a claim "arises from a defendant's" conduct. *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990), *rev'd on other grounds, Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S. Ct. 1522, 113 L. Ed. 2d 622 (1991). This test provides that "a defendant cannot be hauled into court for activities unrelated to the cause of action in the absence of a showing of substantial and continuance contacts sufficient to establish general jurisdiction. *Id.* (citing *Scott v. Breeland*, 792 F.2d 925, 928 (9th Cir. 1986). It is designed to ensure "there is some nexus between the defendant's activities in the forum ... and the cause of action." *Seltzer Sister Bottling Co. v. Source Perrier, S.A.*, No. C-90-1468 MHP, 1991 WL 279273, at *7 (N.D. Cal. May 1, 1991) (citing *Shute*, 897 F.2d at 385)).

The Complaint only alleges harm caused by Dundon's actions occurring after January 2019. (Complaint, ¶¶ 30-46.) These are the only actions of which Plaintiffs complain about Dundon, and they all took place (if at all) while Dundon resided and performed work emanating from Texas. (Dundon Decl., ¶¶ 9-14.) Consequently, Plaintiffs cannot satisfy the second prong because their claims do not arise or result from Dundon's forum-related activities in California. *See Shute*, 897 F.2d at 385.

(c) Even If Plaintiffs Could Establish the First Two Prongs, It Would Not Comport With Fair Play and Substantial Justice for a California Court to Exercise Jurisdiction Over Dundon.

Even if Plaintiffs could show Dundon "purposefully availed" himself of California's laws and benefits, which the evidence and facts foreclose, there is no specific jurisdiction because

1 Plaintiffs cannot meet the third prong. The assertion of personal jurisdiction over Dundon would
2 not “comport with ‘fair play and substantial justice.’” *Pavlovich, supra*, 29 Cal.4th at 269.

3 The Ninth Circuit “set forth a congeries [sic] of factors to be considered in determining
4 whether the exercise of jurisdiction over a nonresident defendant satisfies the reasonableness test:
5 1) the extent of the defendant’s purposeful interjection into the forum state’s affairs; 2) the burden
6 on the defendant; 3) conflicts of law between the forum and defendant’s home jurisdiction; 4) the
7 forum’s interest in adjudicating the dispute; 5) the most efficient judicial resolution of the dispute;
8 6) the plaintiff’s interest in convenient and effective relief; and 7) the existence of an alternative
9 forum. *Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1198-1201 (9th Cir. 1988). The balance
10 of these factors weighs against exercising jurisdiction over Dundon.

11 The first factor favors Dundon. As detailed above, Dundon’s purposeful interjection into
12 California affairs are none other than limited trips unrelated to the present litigation. (Dundon Decl.,
13 ¶¶ 9-14.) The second factor also favors Dundon, as the burden on him, an individual, to litigate in
14 California is both obvious and onerous. The third factor, conflicts of law, appears neutral at this
15 early stage. The fourth factor, the forum’s interest in adjudicating the dispute also appears neutral,
16 as this Court has no unique interest in adjudicating the dispute and Texas federal courts are equally
17 capable of adjudicating the claims in the Complaint. The fifth factor is likely neutral, as the parties
18 can resolve the litigation equally as efficient in California and Texas. The sixth factor, the Plaintiffs’
19 interest in convenient and effective relief, favors Dundon. Plaintiffs reside across the country
20 (Schmidt resides in California; Northrop resides in Florida); California and Texas federal courts are
21 equally suited to resolve this dispute; and Texas is more centrally located geographical and, thus, is
22 a more convenient forum to resolve the dispute. Finally, the seventh factor, the existence of an
23 alternative forum, weighs in Dundon’s favor. If this Court dismisses this action against Dundon for
24 lack of personal jurisdiction, Plaintiffs can pursue their claims in Texas because a Texas Court can
25 exercise personal jurisdiction over Dundon and the other co-defendants³.

26
27 ³ As set out in more detail in Defendant’s Motion to Transfer, all Defendants reside in
28 Texas except for Charlie Ebersol. (See Defendant’s Motion to Transfer, filed concurrently

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The balance of the Ninth Circuit's reasonableness factors favors dismissal, as exercise of jurisdiction over Dundon by this Court would be unexpected and unreasonable. Dundon is a Texas resident who owns a Texas business and does not live in or own property in California. (Dundon Decl., ¶¶ 2-8.) It cannot be said that, as a result of his isolated contacts consisting of a handful of trips unrelated to the Alliance of American Football, that Dundon would expect to "be[] haled into court [t]here." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296-97 (1980). Indeed, because his contact with California has been so minimal, Dundon never expected to subject to jurisdiction in California in connection with his involvement with the Alliance of American Football. (Dundon Decl., ¶ 17.)

IV. CONCLUSION

For the foregoing reasons, Defendant Thomas Dundon respectfully requests that the Court dismiss the current action against him based on the Court's lack of personal jurisdiction.

DATED: July 1, 2019

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By: /s/ Leila Narvid

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DATED: July 1, 2019

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herewith, and the Declaration of Alana K. Ackels in support of same.)